



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket Nos. 11-80, 10-95, 05-254, RM-11322; FCC 16-13]

International Settlements Policy Reform

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, based on recent State Department guidance, the Federal Communications Commission (Commission) proposes to remove the nondiscrimination prong of the International Settlements Policy (ISP) on the U.S.-Cuba route and the nondiscrimination requirement condition placed on the waiver of benchmark settlements for the U.S.-Cuba route by the TeleCuba Waiver Order. Removal of these nondiscrimination requirements would allow U.S. carriers to enter into individualized contracts with the Cuban carrier.

DATES: Submit comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and replies on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket Nos. 11-80, 10-95, 05-254 and RM-11322, by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Federal Communications Commission's ECFS Website:** <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail to FCC504@fcc.gov, phone: 202-418-0530 (voice), tty: 202-418-0432.

For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Krech or Jodi Cooper, Telecommunications and Analysis Division, International Bureau, FCC, (202) 418-1480 or via email to David.Krech@fcc.gov, Jodi.Cooper@fcc.gov. On PRA matters, contact Cathy Williams, Office of the Managing Director, FCC, (202) 418-2918 or via email to Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in IB Docket Nos. 11-80, 10-95, 05-254 and RM-11322, FCC 16-13, adopted on February 10, 2016 and released on February 12, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554. The document also is available for download over the Internet at https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-13A1.pdf

Comment Filing Procedures

Pursuant to §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's ECFS website at <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., S.W., Room TW-A325, Washington, D.C. 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington D.C. 20554.

Summary of Further Notice of Proposed Rulemaking

1. The Further Notice of Proposed Rulemaking (FNPRM) proposes to remove the nondiscrimination requirements from the U.S.-Cuba route. Recent policy guidance from the U.S. Department of State (State Department) recommends that the Commission discontinue application of the nondiscrimination requirements on the U.S.-Cuba route in light of the changes

in U.S.-Cuba relations. See Modification of Process Regarding the Licensing of Telecommunications Services Between the United States and Cuba, Public Notice, 30 FCC Rcd 12458 (IB 2015) (2015 Cuba Public Notice). Currently, under Commission policy and rules, the terms and conditions of any operating agreement to provide facilities-based switched voice service on the U.S.-Cuba route between a U.S. carrier and a carrier with market power in Cuba must be identical to the equivalent terms and conditions in the agreement of any other U.S. carrier providing the same or similar service between the United States and Cuba. The FNPRM seeks comment on the State Department's recommendation for removal of the nondiscrimination requirements based on the changes in U.S.-Cuba relations and whether such a Commission action would serve the public interest. Specifically, the FNPRM seeks comment on removing (1) the nondiscrimination prong of the International Settlements Policy (ISP), as codified in 47 CFR 63.22(f), and (2) the nondiscrimination requirement condition placed on the waiver of benchmark settlements by the TeleCuba Waiver Order. See IConnect Wholesale, Inc., d/b/a TeleCuba; Petition for Waiver of the International Settlements Policy and Benchmark Rate for Facilities-Based Telecommunications Services with Cuba, Memorandum Opinion and Order, 26 FCC Rcd 5217, 5228, para. 31 (IB 2011) (TeleCuba Waiver Order).

2. The FNPRM seeks comment on whether removal of these nondiscrimination requirements would serve the public interest, for example, by leading to more direct agreements between U.S. carriers and the Cuban carrier, ETECSA. In the 2012 ISP Reform Order, 78 FR 11109 (Feb. 15, 2013), the Commission found that removal of the ISP on all routes (except the nondiscrimination prong on the U.S.-Cuba route) would provide U.S. carriers greater flexibility to negotiate lower settlement rates. *See International Settlement Policy Reform et al.*, Report and Order, 27 FCC Rcd 15521 (2012) (2012 ISP Reform Order). Do commenters agree that

circumstances have now changed sufficiently with respect to Cuba to anticipate that the removal of the nondiscrimination prong of the ISP on the U.S.-Cuba route will provide similar opportunities? More generally, comment is sought on whether removal of these nondiscrimination requirements may encourage competition on the U.S.-Cuba route. Would the ability of U.S. carriers to negotiate individualized operating agreements with ETECSA give U.S. carriers the ability to negotiate lower rates? Are there any concerns that removal of our nondiscrimination requirements would cause discrimination or threats of discrimination or other anticompetitive actions against U.S. carriers as a strategy to obtain pricing concessions regarding the exchange of traffic between the United States and Cuba?

3. The FNPRM observes that the operation of the current benchmark settlement rate for telecommunications services between the United States and Cuba – which we are not proposing to change – will continue to provide a safeguard against anticompetitive actions against U.S. carriers. (The State Department recommends that the Commission continue to apply the benchmarks settlement policy on the U.S.-Cuba route, but continue to allow waivers of limited duration. See 2015 Cuba Public Notice, 30 FCC Rcd at 12461.) Although carriers may still obtain operating agreements above the benchmark rate, such agreements would require Commission grant of a waiver of the benchmark rate before they could go into effect, and, in considering the waiver, the Commission would have the opportunity to assess on a case-by-case basis whether allowing an above benchmark settlement rate without the protections of a nondiscrimination rule (with or without conditions) would serve the public interest. Comment is sought on these observations.

4. Currently, any agreement with ETECSA is routinely made available for public inspection under the nondiscrimination requirement condition placed on the waiver of the benchmark

settlements in the TeleCuba Waiver Order. TeleCuba Waiver Order, 26 FCC Rcd at 5228, para.

31. The FPRM seeks comment on whether, if the Commission is to remove the nondiscrimination requirement in the TeleCuba Waiver Order, it also should no longer consider operating agreements between a U.S. carrier and ETECSA to be routinely available for public inspection. In that waiver order, the International Bureau adopted other conditions that it believed would help “balance the policy goals of reestablishing direct telecommunications links with Cuba by U.S. carriers with promoting competition and lower international calling rates for services to Cuba, as well as other international routes.” TeleCuba Waiver Order, 26 FCC Rcd at 5222, para. 15. Commenters may address whether it would serve the public interest to reevaluate other conditions adopted in the TeleCuba Waiver Order in light of the proposed changes.

Finally, the FNPRM seeks comment on whether there are other actions the Commission should take involving the U.S.-Cuba route to facilitate the provision of service between the United States and Cuba.

Initial Paperwork Reduction Act of 1995 Analysis

5. The Further Notice does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹

Initial Regulatory Flexibility Certification

6. The Regulatory Flexibility Act of 1980, as amended (RFA),² requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings,

¹ Pub. L. No. 107-198, 116 Stat. 729 (2002); see 44 U.S.C. 3506(c)(4).

² See 5 U.S.C. 603. The RFA, 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 847, 857 (1996).

unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”³ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁵ A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

7. The Commission has licensed facilities-based telecommunications between the United States and Cuba based on policy guidance from the State due to the unique relationship between the United States and Cuba. The State Department has recently provided new guidance that recommends that the Commission remove the nondiscrimination requirements placed on the U.S.-Cuba route.

8. In this Further Notice, the Commission seeks comment on proposals to remove the nondiscrimination requirements for the provision of telecommunications services between the United States and Cuba. We seek comment on whether, if we are to remove the nondiscrimination requirements, we also should no longer consider operating agreements between a U.S. carrier and ETECSA to be routinely available for public inspection. The proposals in this Further Notice are designed to allow U.S. carriers to negotiate individualized operating agreements with ETECSA, the Cuban carrier. Allowing U.S. carriers to negotiate

³ 5 U.S.C. 605(b).

⁴ 5 U.S.C. 601(6).

⁵ 5 U.S.C. 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public

individualized operating agreements may lead to more U.S. carriers entering into operating agreements with ETECSA, more direct connections between the United States and Cuba, and lower settlement rates on the U.S.-Cuba route.

9. The proposals in this Further Notice, if adopted, would not change the need for a U.S. carrier to reach an agreement with the Cuban carrier and to file the agreement with the Commission. Therefore, these rule changes should not have a significant economic impact on any carrier. Further, these requirements are only applicable to facilities-based carriers, which are generally large companies and do not come within the definition of small businesses. Consequently, we do not believe that the proposals affect a substantial number of small businesses. Accordingly, the Commission certifies that the proposed rule change will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Further Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the Federal Register.

Ordering Clauses

10. IT IS ORDERED that, pursuant to Sections 1, 2, 4(i), 4(j), 201-205, 208, 211, 214, 303(r), 309, and 403, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201-205, 208, 211, 214, 303(r), 309, and 403, this Further Notice of Proposed Rulemaking IS ADOPTED.

11. IT IS FUTHER ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory changes to Commission policy and rules described in this Further Notice of Proposed

comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

Rulemaking and that comment is sought on these proposals.

12. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 63

Communications common carriers, Telecommunications.

Federal Communications Commission.

Gloria J. Miles,
Federal Register Liaison Officer.
Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 63 as follows:

Proposed Rules

PART 63 – EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

- 1. The authority citation for part 63 continues to read as follows:**

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

63.22 [Amended].

- 2. In § 63.22 remove and reserve paragraph (f).**

[FR Doc. 2016-04837 Filed: 3/3/2016 8:45 am; Publication Date: 3/4/2016]